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No. 02-258

IN THE
SUPREME COURT OF THE UNITED STATES

SUSAN JINKS,

Petitioner,

V.

RICHLAND COUNTY,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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31 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 2

STATEMENT OF THE CASE 3

ARGUMENT 7

I. THE SOUTH CAROLINA SUPREME COURT ERRED BECAUSE, WITH RESPECT TO CLAIMS AGAINST POLITICAL SUBDIVISIONS OF STATES, SECTION 1367(d) DOES NOT IMPLICATE AFFIRMATIVE LIMITS ON CONGRESSIONAL POWER UNDER EITHER THE ELEVENTH OR TENTH AMENDMENT 7

A. The Eleventh Amendment sovereign immunity of the States is not implicated in this case because § 1367(d) is being applied to the political subdivision of the State as a party to the lawsuit and not the State itself 7

B. This case does not implicate the concerns that have motivated the Court, under the authority of the Tenth Amendment, to hold congressional legislation unconstitutional or to apply the clear-statement test 10

II. THE PROVISION IN ARTICLES I AND III FOR A SYSTEM OF FEDERAL COURTS PROPERLY INCLUDES CONGRESSIONAL AUTHORITY TO EFFICIENTLY REGULATE SUCH COURTS IN THEIR INTERRELATIONSHIPS WITH STATE COURTS 13

A. When Congress acts pursuant to Article III, the Necessary and Proper Clause, and the Supremacy Clause, the law should be upheld as long as it is consistent with other provisions of the Constitution and is a rational means of achieving a legitimate end 16

B. Section 1367(d) is a constitutional exercise of Congress's authority under Article III and the Necessary and Proper Clause because it is rationally related to the protection of unfettered access to the original jurisdiction of the federal courts and the otherwise efficient regulation of federal court jurisdiction and practice 17

CONCLUSION 23

TABLE OF AUTHORITIES

CASES

Adarand Constructors, Inc. v. Mineta,
534 U.S. 103 (2001) 1

Adarand Constructors, Inc. v. Pena,
515 U.S. 200 (1995) 1

Alden v. Maine,
527 U.S. 706 (1999) ..... *passim*

Beers v. Arkansas,
61 U.S. 527 (1858) 5,7

Brazinski v. Amoco Petroleum Additives Co.,
6 F.3d 1176 (7th Cir. 1993) 17

Brewer v. City of El Cerrito,
666 F. Supp. 1346 (N.D. Cal. 1987) 21

Burns-Toole v. Byrne,
11 F.3d 1270 (11th Cir. 1994) 22

City of Los Angeles v. Superior Court,
85 Cal. App. 3d 143 (Ct. App. 2d Dist. 1978) 18

Conn. Nat'l Bank v. Rytman,
94 A.2d 1246 (Conn. 1997) 19

Conroy v. Aniskoff,
507 U.S. 511 (1993) 15

Duckworth v. Franzen,
780 F.2d 645 (7th Cir. 1985),
cert. denied, 479 U.S. 816 (1986) 22

Equity Res. Mgmt. v. Vinson,
23 So. 2d 634 (Ala. 1998) 19

Felder v. Casey,
487 U.S. 131 (1988) 8,14,18

Fin. Gen. Bankshares, Inc. v. Metzger,
680 F.2d 768 (D.C. Cir. 1982) 21

Fullilove v. Klutznick,
448 U.S. 448 (1980) 1

Garcia v. San Antonio Metro. Transit Auth.,
469 U.S. 528 (1985) 10

Garrett v. Moore-McCormack Co.,
317 U.S. 239 (1942) 14

Gregory v. Ashcroft,
501 U.S. 452 (1991) 10,11

Hanna v. Plumer,
380 U.S. 460 (1965) ..... *passim*

Henson v. Columbus Bank & Trust Co.,
651 F.2d 320 (5th Cir. 1981) 20

Int'l Games, Inc. v. Sims,
44 N.E.2d 736 (Ill. 1982) 18

Jinks v. McCauley,
No. 98-1003, 1998 U.S. App.
LEXIS 21462 (4th Cir. Sept. 1, 1998) 3

Jinks v. Richland County,
63 S.E.2d 104 (S.C.),
cert. granted, 2002 U.S. LEXIS 7794
(U.S. Oct. 21, 2002) ..... *passim*

L.A. Draper & Son v. Wheelabrator-Frye, Inc.,
735 F.2d 414 (11th Cir. 1984) 20,21,22

Mayor v. Cooper,
73 U.S. (6 Wall.) 247 (1867) ..... *passim*

McCulloch v. Maryland,
17 U.S. (4 Wheat.) 316 (1819) 16

McNeal v. Paine, Webber, Jackson & Curtis, Inc.,
93 S.E.2d 331 (Ga. 1982) 19

Metro Broad., Inc. v. FCC,
497 U.S. 547 (1990) 1

Minnesota v. Clover Leaf Creamery Co.,
449 U.S. 456 (1981) 16

Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,
429 U.S. 274 (1977) 7,8

Musher Found. v. Alba Trading Co.,
127 F.2d 9 (2d Cir. 1942) 19

Nevada v. Hall,
440 U.S. 410 (1979) 5,7

Nev. Dep't of Human Res. v. Hibbs,
122 S. Ct. 2618 (2002) 1

New York v. United States,
505 U.S. 144 (1992) ..... *passim*

Newman v. Burgin,
930 F.2d 955 (1st Cir. 1991) 20

Notrica v. Bd. of Supervisors,
925 F.2d 1211 (9th Cir. 1991) 20

O'Brien v. Cont'l Ill. Nat'l Bank & Trust Co.,
593 F.2d 54 (7th Cir. 1979) 20,22

Pharo v. W.L. Smith,
625 F.2d 1226 (5th Cir. 1980) 20

Prater v. United Mine Workers,
793 F.2d 1201 (11th Cir. 1986) 20

Printz v. United States,
521 U.S. 898 (1997) ..... *passim*

Raygor v. Regents of the Univ. of Minn.,
534 U.S. 533 (2002) ..... *passim*

Saulsberry v. Atl. Richfield Co.,
673 F. Supp. 811 (N.D. Miss. 1987) 21

Tennessee v. Davis,
100 U.S. 257 (1879) 14

United Mine Workers v. Gibbs,
383 U.S. 715 (1966) 17,21

Weaver v. Hood,
77 So. 2d 440 (Ala. 1991) 18

CONSTITUTIONAL PROVISIONS

U.S. Const. art. III, § 1 ..... *passim*

U.S. Const. art. I, § 8 ..... *passim*

STATUTES

11 U.S.C. § 108(c) 15

15 U.S.C. § 6606(e)(4) 15

28 U.S.C. § 1367 ..... *passim*

42 U.S.C. § 1983 4

50 U.S.C. App. § 501 *et seq* 15

50 U.S.C. App. § 525 .....

S.C. Code §§ 15-78-10 to 200 (Supp. 2001) 4

MISCELLANEOUS

American Law Institute,
Study of the Division of Jurisdiction Between State and Federal Courts (1968) 19

18 Moore's Federal Practice 3d,
§ 131.21(3)(d)(i) 19

Patrick D. Murphy,
A Federal Practitioner's Guide to Supplemental Jurisdiction Under 28 U.S.C. § 1367, 78 Marq. L. Rev. 973 (1995) 17

Herbert Wechsler,
Federal Jurisdiction and the Revision of the Judicial Code, 13 Law & Contemp. Probs. 216 (1948) 19

STATEMENT OF INTEREST

The Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee") submits this brief as *amicus curiae*, with the consent of the parties,[1] in support of Petitioner's argument that 28 U.S.C. § 1367(d) -- which tolls the statutes of limitations applicable to supplemental state-law claims while those claims are pending in federal court -- may constitutionally be applied in tort cases against the political subdivisions of the State.[2]

The Lawyers' Committee was formed in 1963 at the request of President Kennedy in order to involve private attorneys throughout the country in the national effort to ensure the civil rights of all Americans. Toward that end, the Lawyers' Committee has been involved as *amicus curiae* or counsel in several cases before this Court involving the authority of Congress to act under the powers delegated to it under the Constitution. *See, e.g., Nev. Dep't of Human Res. v. Hibbs*, 122 S. Ct. 2618 (2002) (granting cert.); *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995); *Metro Broad., Inc. v. FCC*, 497 U.S. 547 (1990); *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

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[1] Counsel for *amicus curiae* authored this brief in its entirety. No person or entity other than *amicus curiae*, its staff, or its counsel made a monetary contribution for the preparation or submission of this brief. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

[2] Section 1367(d) states, in relevant part, "The period of limitations for any claim asserted under [supplemental jurisdiction] . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

SUMMARY OF ARGUMENT

The Supreme Court of South Carolina erred in applying this Court's Eleventh Amendment precedent respecting the immunity of States from suits to limit congressional authority to determine the circumstances under which political subdivisions of a State can be subject to suit. The court below erroneously conflated a State's legislative authority to determine whether and when its political subdivisions may be subject to suit with the Eleventh Amendment sovereignty interest of a State in not being answerable as a party in a lawsuit. The decision under review completely misapplied this Court's decision in *Raygor v. Regents of the University of Minnesota*, 534 U.S. 533 (2002), with respect to its holding, the underlying constitutional interests, and the questions it expressly did not reach.

The South Carolina Supreme Court also erred in analyzing 28 U.S.C. § 1367(d) under this Court's Tenth Amendment precedent. Although recognizing that § 1367(d) is "necessary" legislation for the regulation of the jurisdiction of the federal courts and, therefore, an exercise of Congress's expressly delegated powers under Articles I and III of the Constitution, the court nevertheless held that § 1367(d) impermissibly intruded on the sovereign interests of States. In this respect, the court failed to recognize that the circumstances in which the Tenth Amendment imposes judicially enforceable limitations on the delegated powers of Congress are rare, and that, more specifically, § 1367(d) neither affects the composition of State government nor commandeers State legislative or executive functions.

Congress enacted § 1367(d) pursuant to powers expressly conferred by Articles I and III of the Constitution, in combination with the Supremacy Clause and the Necessary

and Proper Clause, to regulate the jurisdiction of the federal courts and manage the relations between the federal and state courts under the Constitution's dual judicial system. As such, that legislation is subject to this standard. Section 1367(d) easily satisfies rational basis review as it is rationally related to interests in preserving the choice of a federal forum for determination of federal claims and providing for the rational and efficient regulation of the jurisdiction of the federal courts.

STATEMENT OF THE CASE

On October 14, 1994, Carl Jinks ("Mr. Jinks") was found to be in contempt of court for failure to pay $1500 in child support. *Jinks v. McCauley*, No. 98-1003, 1998 U.S. App. LEXIS 21462, at *2 (4th Cir. Sept. 1, 1998) (unpublished table decision). Pending payment, Mr. Jinks was confined in the Richland County Detention Center (the "County"). Before his incarceration, Mr. Jinks informed the sentencing court that he was an alcoholic and was suffering from withdrawal symptoms. In response, the court instructed Mr. Jinks to seek medical attention once he arrived at the jail. *Id.*

Three days later, a guard observed Mr. Jinks shaking, sweating profusely, laughing, and clutching the bars of his cell. Mr. Jinks was then brought to the jail's physician, who determined that he was suffering from Stage II alcohol withdrawal. The physician prescribed medication to treat the symptoms and ordered that Mr. Jinks be kept under observation. *Id.* at *3. At 9:30 a.m. of Mr. Jinks's fourth day in jail, before the prescription arrived, guards at the county jail observed that Mr. Jinks was sitting upright and wasn't shaking, sweating, or laughing anymore. An hour later, when placing other inmates in the cell, County guards discovered that Mr. Jinks was dead. *Id.* at *4.

In June of 1996, Susan Jinks ("Mrs. Jinks"), Mr. Jinks's wife, brought suit against the County in federal district court, asserting claims under 42 U.S.C. § 1983 and the Eighth Amendment. *Id.* Mrs. Jinks also invoked the court's supplemental jurisdiction and alleged state claims of outrage and negligence under the South Carolina Tort Claims Act, S.C. Code §§ 15-78-10 to -200 (Supp. 2001).

In December 1997, the district court granted summary judgment to the defendant on Mrs. Jinks's § 1983 claim and then declined, pursuant to 28 U.S.C. § 1367(c)(3), to exercise jurisdiction over Petitioner's remaining state claims. *See Jinks v. Richland County*, 563 S.E.2d 104, 105 (S.C.), *cert. granted*, 2002 U.S. LEXIS 7794 (U.S. Oct. 21, 2002) 2002). Approximately two weeks later, Mrs. Jinks filed in state court, alleging the wrongful death and survival action currently before the Court. *Id.* By the time of her state filing, the two-year statute of limitations for Mrs. Jinks's claims would have passed had she not timely filed in federal court. *See* S.C. Tort Claims Act, § 15-78-100(a). Thus, Mrs. Jinks argued that her claims were timely under the authority of § 1367(d), which tolls state statutes of limitations during the exercise of federal court jurisdiction. After trial, Mrs. Jinks was awarded $80,000 in damages.

On appeal, the South Carolina Supreme Court reversed the verdict, holding that 28 U.S.C. § 1367(d) impermissibly infringed upon South Carolina's sovereignty in violation of the Tenth Amendment to the United States Constitution. *Jinks*, 563 S.E.2d at 108-09. More specifically, the court held that Congress does not have the power to enact legislation, if it conflicts with State law regarding the statutory immunity of the State's political subdivisions, to protect unfettered access to federal courts and to aid in the efficient regulation of federal court jurisdiction. *Id.* at 107.

With respect to the Tenth Amendment, the South Carolina Supreme Court acknowledged that "if a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." *Id.* at 106 (quoting *New York v. United States*, 505 U.S. 144, 156 (1992)). The *Jinks* court then answered in the affirmative the question "whether [§ 1367(d)] is within Congress' power as . . . enumerated in the Constitution," *id.* at 106, and concluded that it "is a useful aid to the exercise of federal jurisdiction, and, therefore, is necessary within the meaning of the Necessary and Proper Clause." *Id.* at 107 (internal quotation omitted). However, the court decided that "§ 1367(d) is not 'proper' within the meaning of the Necessary and Proper Clause . . . [because] the tolling provision interferes with the State's sovereign authority to establish the extent to which its political subdivisions are subject to suit." *Id.*

The South Carolina Supreme Court reached this result by purporting to apply this Court's Eleventh Amendment decisions regarding the ability of States to determine whether they consent to suits against themselves in State courts. *Alden v. Maine*, 527 U.S. 706 (1999); *Nevada v. Hall*, 440 U.S. 410 (1979); *Beers v. Arkansas*, 61 U.S. 527 (1858). In particular, the South Carolina Supreme Court relied upon *Raygor*: "Most recently, the United States Supreme Court recognized that 'although we have not addressed whether federal tolling of a state statute of limitations constitutes an abrogation of state sovereign immunity with respect to claims against state defendants, who can say that the notion at least raises serious constitutional doubt.'" *Jinks*, 563 S.E.2d at 108 (quoting *Raygor*, 534 U.S. at 543). The court below then referred to South Carolina's determination of the

liability of its political subdivisions under its Tort Claims Act. It then concluded that

> § 1367(d) potentially exposes political subdivisions to litigation and liability after the limitations period *established by the State* has expired. Accordingly, in tort actions against political subdivisions, § 1367(d) extends the waiver of the sovereign immunity of political subdivisions, thereby interfering with the State's sovereignty in violation of the Tenth Amendment and the Necessary and Proper Clause."

Id. at 108 (emphasis added). Relying on *Raygor*, the court concluded that the tolling provisions of § 1367(d) "does not apply" in the circumstances of this case. *Id.*

In so holding, the South Carolina Supreme Court determined that the State's interests here were paramount to the federal interests in preserving a federal forum for federal claims and regulating the jurisdiction of the federal courts: "As a practical matter, we recognize our decision may affect a plaintiff's decision to pursue a tort action against a political subdivision in federal court. We conclude, however, that a party's ability to choose its forum should not prevail over the State's sovereign authority to establish the terms under which its political subdivisions may be sued." *Id.*

ARGUMENT

I. THE SOUTH CAROLINA SUPREME COURT ERRED BECAUSE, WITH RESPECT TO CLAIMS AGAINST POLITICIAL SUBDIVISIONS OF STATES, SECTION 1367(d) DOES NOT IMPLICATE AFFIRMATIVE LIMITS ON CONGRESSIONAL POWER UNDER EITHER THE ELEVENTH OR THE TENTH AMENDMENT

A. The Eleventh Amendment sovereign immunity of the States is not implicated in this case because § 1367(d) is being applied to a political subdivision of the State as a party to a lawsuit and not to the State itself

The manifest error of the South Carolina Supreme Court is its mistaken reliance on Eleventh Amendment precedent regarding the immunity of the *States* as parties as a limitation on the power of Congress to effect suits against *political subdivisions* of States. *See Jinks*, 563 S.E.2d at 107-09 (citing *Alden*, 527 U.S. at 749); *Raygor*, 534 U.S. 533.[3] The Eleventh Amendment imposes limits upon the authority of Congress to make unconsenting States amenable to suits in federal or state court, but represents no such limit with respect to local governments. *See Alden*, 527 U.S. at 756 ("[An] important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities. The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State."); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (same).

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[3] The court also cited to *Nevada*, 440 U.S. at 414, and *Beer*, 61 U.S. 527, but these cases neither implicate nor discuss Eleventh Amendment limitations on congressional power.

The South Carolina Supreme Court's error may be attributable to its conflation of the Eleventh Amendment limitation on when states may be made to appear as parties answerable in a lawsuit with the legislative authority to decide when and under what circumstances its political subdivisions may be subject to suit. In other words, the court characterizes, as an attribute of sovereignty, the state's decisions with respect to the immunity of its political subdivisions as though that equated them with sovereign immunity under the Eleventh Amendment. Specifically, the court consistently characterized the State Tort Claims Act as: "the State's sovereign authority to establish the extent to which its political subdivisions are subject to suit," *Jinks*, 563 S.E.2d at 107; "the State's sovereign authority to establish the terms under which its political subdivisions may be sued," *id.* at 108; "the States' sovereignty to establish the conditions upon which tort actions may be maintained against political subdivisions," *id.* Calling decisions about immunity an aspect of sovereignty, however, does not convert them into interests encompassed within Eleventh Amendment sovereign immunity.

Supreme Court precedent speaks clearly on this issue -- when acting pursuant to an enumerated power, Congress can abrogate the immunity of the political subdivisions of a State and, to the extent that State law is inconsistent with a federal mandate, it "must yield to the federal right." *Felder v. Casey*, 487 U.S. 131, 143 (1988); *see also id.* ("The decision to subject state subdivisions to liability for violations of federal rights . . . was a choice that Congress, not the [State] Legislature, made, and it is a decision that *the State has no authority to override*." (emphasis added)); *Doyle*, 429 U.S. at 280 ("The bar of the Eleventh Amendment to suit in federal courts extends to States . . . but does not extend to counties and similar municipal corporations"). In other words, in

contrast to the lower court's holding, Congress can not only alter *the conditions* under which political subdivisions can be sued, but also the more foundational question of *whether* they can be sued at all. Congress can do so pursuant to the powers conferred to it by the Constitution, including Article III and the Necessary and Proper Clause.

Finally, while the South Carolina Supreme Court purports to rely on *Raygor*, its use of this decision is completely misplaced. In one if its citations to *Raygor*, *Jinks* notes the Court's *dicta* suggesting that it is doubtful whether § 1367(d) could constitutionally be invoked in suits *against the states*. By providing no other context to the quote, the South Carolina Supreme Court suggests that there is a strong analogy between *Raygor* and *Jinks*. However, *Raygor* explicitly stated, "We express *no view* on the application or constitutionality of § 1367(d) when a State consents to suit or *when a defendant is not a State*." 534 U.S. at 547 (emphasis added). Moreover, the court's analogy in *Jinks* is even more troublesome when one considers the fact that *Raygor* did *not* hold § 1367(d) unconstitutional on Eleventh Amendment grounds and instead decided the case based upon principles of statutory interpretation. Thus, not only was *Raygor* motivated by the Eleventh Amendment rather than the Tenth Amendment, but it also did not reach the ultimate constitutional question. In sum, the *Jinks* court used *Raygor* for a constitutional holding that was not made, in the context of an Amendment that was not at issue, and on a topic that the Court explicitly reserved.

B. This case does not implicate the concerns that have motivated the Court, under the authority of the Tenth Amendment, to hold congressional legislation unconstitutional or to apply the clear-statement test

The *Jinks* court did not and could not directly analogize the facts in this case to any of the Court's Tenth Amendment cases articulating the rare circumstances in which the Tenth Amendment imposes judicially enforceable limitations on the power of Congress. Given that § 1367(d) does not invoke any of these limitations, the appropriate guardian of the federal-state balance is "the structure of the Federal Government," and not the judicial branch. *See Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 550 (1985).

First, and most importantly, the South Carolina Supreme Court recognized that § 1367(d) is "necessary" legislation for the regulation of federal jurisdiction because it protects litigants' choice of a federal forum, relieves the burden on federal judges of unnecessarily deciding state claims, and manages the relations between federal and state courts in the handling of claims. Thus, there is no question that this is an exercise of Congress's delegated powers under Articles I and III, and, therefore, is not a power reserved to the States. *See New York v. United States*, 505 U.S. 144, 156 (1992).

Second, the South Carolina Supreme Court found that § 1367(d) was not a proper means of addressing Congress's interests because it impermissibly infringed on State's sovereignty. It drew this conclusion despite the fact that § 1367(d) does not intrude upon the distinctive sovereignty interests identified in this Court's decisions. For example, in *Gregory v. Ashcroft*, 501 U.S. 452 (1991), the Court held, on the basis of statutory interpretation, that the Age Discrimination in Employment Act of 1967 ("ADEA") did

not apply to state court judges who faced mandatory retirement under the Missouri constitution. The Court applied a restrictive method of statutory construction, the clear-statement test, because it did not want to assume that Congress intended to control the composition, and thus the essence, of state governments. *See id.* at 460 ("[The application of the ADEA to the State judiciary] goes beyond an area traditionally regulated by the States; it is a decision of the most fundamental sort for a sovereign entity. Through the structure of its government, and the character of those who exercise governmental authority, a State defines itself as a sovereign."). Section 1367(d), in contrast, does not even have a remote relationship to such serious concerns. It in no way controls the composition of state governments and, instead, merely protects the original jurisdiction of the federal courts. As such, *Gregory* neither suggests that § 1367(d) is unconstitutional nor does it suggest that the restrictive clear-statement rule need apply.

Importantly, § 1367(d) also does not fall within that narrow set of circumstances in which the Court has found Congress to have commandeered the legislative or executive functions of the States. *See New York*, 505 U.S. 144 (holding that the Tenth Amendment and principles of state sovereignty prohibit Congress from compelling the States to enact regulations according to its instructions); *Printz v. United States*, 521 U.S. 898 (1997) (finding unconstitutional the Brady Handgun Control Act, which required state and local law enforcement personnel to conduct background checks before issuing permits for firearms). For example, in *New York*, Congress enacted a statute that compelled the States to regulate the disposal of radioactive waste in a manner directed by Congress. As a result, the Court worried that when "the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised

the regulatory program may remain insulated from the electoral ramifications of their decision." *New York*, 505 U.S. at 145-46.

In contrast, § 1367(d) does not diminish the accountability of either sovereign. When a state court applies a federal law, as they often do, it is perfectly clear which sovereign promulgated the law. *See Printz*, 521 U.S. at 907 ("It is understandable why [state] courts [have historically] been viewed distinctively . . . ; unlike legislatures and executives, they appl[y] the law of other sovereigns all the time."); *Alden*, 527 U.S. at 752 (noting that Congress "may declare federal law binding and enforceable in state courts"). In other words, there can be no doubt, since the plaintiff cited the statute, that Richland County knew which sovereign was responsible for tolling the statute of limitations while federal proceedings were pending.

In *Printz*, the Court articulated the same concern by holding that Congress cannot conscript state executive officers into the service of a federal regulatory program. 521 U.S. at 942-43. Again, § 1367(d) does no such thing and instead only requires the application of federal law in state court to protect "the right and duty of the national government to have its Constitution and laws interpreted and applied by its own judicial tribunals." *Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 253 (1867). As such, the concerns that motivated *New York* and *Printz* simply do not apply to this case.

Furthermore, a critical flaw in the South Carolina Supreme Court's position is that it does not recognize that, in comparison to the role of the state legislative and executive branches in our federal system, the role of state courts is *sui generis*. The unique position of state judiciaries derives from the Madisonian Compromise -- the Constitution

provided for a Supreme Court but left the formation of lower federal courts to the will of Congress. *See Printz*, 521 U.S. at 907. Since a lower federal court system is optional, it has long been recognized that "state courts [are] peculiarly amenable to federal command" and that "the Supremacy Clause imposes specific obligations on state judges." *Alden*, 527 U.S. at 753; *see also Printz*, 521 U.S. at 907 ([E]arly laws establish . . . that the Constitution was originally understood to permit imposition of an obligation on state *judges* to enforce federal prescriptions, insofar as those prescriptions related to matters appropriate for the judicial power."). For example, Congress can even preempt state procedural law in state courts if the application of the law would "burden the exercise of [a] federal right." *Id.* at 141. In addition, by forming lower federal courts, Congress was entitled to manage the jurisdictional and procedural complications that the formation of a second judicial system imposed. *See, e.g., Hanna v. Plumer*, 380 U.S. 460 (1965). Thus, to the extent that § 1367(d) compels state judges to enforce federal law in furtherance of its Article III power, the Tenth Amendment is not implicated.

II. THE PROVISION IN ARTICLES I AND III FOR A SYSTEM OF FEDERAL COURTS PROPERLY INCLUDES CONGRESSIONAL AUTHORITY TO EFFICIENTLY REGULATE SUCH COURTS IN THEIR INTERRELATIONSHIPS WITH STATE COURTS

Articles I and III grant Congress the discretionary authority to establish a system of federal courts to exist concurrently with state judicial systems. *See* U.S. Const. art. III, § 1; U.S. Const. art. I, § 8, cl. 9. This authority, in combination with the Supremacy Clause and the Necessary and Proper Clause, empowers Congress to regulate the interrelationship between federal and state court systems in

at least two important ways, which, as will be demonstrated, provide ample authority to enact § 1367(d).

First, and most importantly, Congress may act to protect the original jurisdiction of the federal courts, or, in other words, to preserve its prerogative to have federal claims adjudicated in its own courts. *See Cooper*, 73 U.S. (6 Wall.) at 251-52 ("It is the right and duty of the national government to have its Constitution and laws interpreted and applied by its own judicial tribunals"). Accordingly, Congress is entrusted with the discretion to determine which cases the federal courts will hear and the circumstances under which they will do so. *See id.* ("How jurisdiction shall be acquired by the inferior courts . . . and the manner of procedure in its exercise after it has been acquired . . . [are questions] remitted without check or limitation to the wisdom of the legislature."). Second, Congress can regulate state court practice to prevent the adulteration or dilution of federal rights, s*ee Felder*, 487 U.S. at 151 ("[T]he Supremacy Clause imposes on state courts a constitutional duty 'to proceed in such manner that all the substantial rights of the parties under controlling federal law [are] protected.'" (quoting *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 245 (1942)), and to enforce federal rights within the states' own courts, *Printz*, 521 U.S. at 907 ("[T]he Constitution was originally understood to permit imposition of an obligation on state judges to enforce federal prescriptions." (emphasis removed)).

For example, to ensure that federal law is interpreted and applied in a federal forum, Congress may permit parties to take the extraordinary step of stripping a case out of state court. *See Tennessee v. Davis*, 100 U.S. 257, 272 (1879) (holding that the "division of sovereignty over certain matters" justifies Congress's authorization of the removal of a state crime from a state court because of the presence of a

federal issue); *Cooper*, 73 U.S. (6 Wall.) at 253 (noting that if a single federal question exists in a mass of state claims, it "is decisive upon the subject of jurisdiction" if Congress so chooses). In addition, when state law is being applied in federal court, Congress can supplant state procedural rules with its own, even if doing so has significant substantive consequences. *See Hanna*, 380 U.S. at 472 ("[T]he constitutional provision for a federal court system . . . carries with it congressional power to make rules governing the practice and pleading in those courts, which in turn includes a power to regulate matters which, though falling within the uncertain area between substance and procedure, are rationally capable of classification as either."). Finally, Congress has provided procedural rights to individuals that must be enforced in state court pursuant to substantive powers other than Article III that have not encountered serious constitutional question.[4] For example, this Court has long enforced the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501 *et seq.*, which tolls a variety of the civil liabilities of military personnel. *See Conroy v. Aniskoff*, 507 U.S. 511 (1993).

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[4] *Amicus curiae* believes that the case law makes it abundantly clear that Congress can mandate that a state claim that was timely filed in federal court be deemed timely if filed in state court soon thereafter. The arguments for this position follow. However, *amicus curiae* takes no position on the extent to which Congress can regulate state court procedures when not acting pursuant to its Article I and III judicial powers, s*ee, e.g.*, Y2K Act, 15 U.S.C. § 6606(e)(4) (providing for tolling for Year 2000-related claims). Such issues are better addressed when the Court is presented with them. Nevertheless, it is worth noting that if Congress lacked the authority to enact § 1367(d) when both Article I and Article III were involved to the extent they are in this case, it would be difficult to imagine that it could do so when Congress only acts pursuant to Article I. Therefore, this decision will either cast grave constitutional doubt on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 525, the Y2K Act, and the 30-day savings period provided for in bankruptcy law, 11 U.S.C. § 108(c), or will leave these issues for adjudication at a later date.

A. When Congress acts pursuant to Article III, the Necessary and Proper Clause, and the Supremacy Clause, the law should be upheld as long as it is consistent with other provisions of the Constitution and is a rational means of achieving a legitimate end

Because the power to regulate the jurisdiction, practice, and procedures of the federal courts derives from the Necessary and Proper Clause, the standard of review for congressional legislation is the rational-means test articulated in Chief Justice Marshall's seminal opinion *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). *See also Hanna*, 380 U.S. at 472 (citing *McCulloch* for review of exercise of Article III power). According to *McCulloch*, the words "[n]ecessary and proper" were inserted into the Constitution as part of the enumeration of powers of Congress, not among the limits, "to remove all doubts respecting the right [of Congress] to legislate on [the] vast mass of incidental powers . . . involved in the Constitution." 17 U.S. (4 Wheat.) at 321.

As such, the Court applies the following highly deferential test when reviewing legislation enacted pursuant to the Necessary and Proper Clause: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.* Thus, if the means chosen by Congress is rationally related to a legitimate, constitutional end, then the Court should inquire no further into a legislative decision. *See, e.g., Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466 (1981) (sustaining a milk packaging regulation under the "rational basis" test).

B. Section 1367(d) is a constitutional exercise of Congress's authority under Article III and the Necessary and Proper Clause because it is rationally related to the protection of unfettered access to the original jurisdiction of the federal courts and the otherwise efficient regulation of federal court jurisdiction and practice

Congress enacted the "supplemental jurisdiction" statute, 28 U.S.C. § 1367, in 1990 pursuant to recommendations of the Federal Courts Study Committee to improve federal court practice by codifying the former judge-made doctrines of pendent, ancillary, and pendent-party jurisdiction. *See Raygor*, 534 U.S. at 539-40; *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1181-82 (7th Cir. 1993); *see also* Patrick D. Murphy, *A Federal Practitioner's Guide to Supplemental Jurisdiction Under 28 U.S.C. § 1367*, 78 Marq. L. Rev. 973, 973-74 (1995). For example, § 1367(a)[5] codified the old doctrine of pendent jurisdiction, which allowed a party bringing federal claims to join state-law claims against the same defendant if they arose from a common nucleus of operative facts. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Subsection (d) facilitates parties' use and the efficient administration of the grant of jurisdiction Congress provided to the federal courts in subsection (a). The rational relationship between the means chosen -- tolling the statutes of limitations applicable to supplemental state-law claims while those claims are pending in federal court -- and the above-noted end -- the preservation of unfettered access to the federal courts and the efficient regulation of federal court jurisdiction and practice -- is established by a number of federal interests.

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[5] Section 1367(a) states, in relevant part, "[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part

First, § 1367(d) protects the availability of a federal forum for litigants by removing state-imposed burdens on the use of that forum when parties have state and federal claims arising out of the same nucleus of operative facts. Specifically, unless parties are certain beyond any doubt that their federal claims are viable, they will face the risk that their choice of a federal forum, in the absence of tolling, will result in their inability to prosecute their state claims. This is due, in part, to the fact that many states do not permit plaintiffs to split their claims between federal and state courts.[6] Thus, when parties file in federal court, they will be forced to bring their state claims as well, creating the distinct possibility that they will find themselves in Mrs. Jinks's position -- the price tag on her initial decision to use a federal forum was $80,000.[7] If attorneys foresee this possibility, it will, absent exigent circumstances, likely be determinative of their choice of forum. As such, state limitations law "discriminates against the federal right" to use the original jurisdiction of the federal courts. *Felder*, 487 U.S. at 141.

Second, even if parties attempt to bring their federal and state claims sequentially, rather than simultaneously, in

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of the same case or controversy under Article III of the United States Constitution."

[6] *See, e.g.*, *Weaver v. Hood*, 577 So. 2d 440, 442 (Ala. 1991) ("This Court has consistently refused to allow a person to prosecute an action in a state court while another action on the same cause and against the same parties is pending in a federal court in this State."); *Int'l Games, Inc. v. Sims*, 444 N.E.2d 736 (Ill. 1982); *City of Los Angeles v. Superior Court*, 85 Cal. App. 3d 143 (Ct. App. 2d Dist. 1978).

[7] If state law created such powerful disincentives to bringing cases in federal courts, it would raise important constitutional questions about the validity of the underlying state laws. In *Raygor*, the Court noted the possibility, without expressing an opinion, that § 1367(d) remedied violations of the Due Process Clause. *See* 534 U.S. at 546.

federal and state court, they will likely be foreclosed from pursuing this avenue as well. *See* 18 Moore's Federal Practice 3d, § 131.21(3)(d)(i), p. 131-49 ("If a plaintiff has litigated a claim in federal court, the federal judgment precludes relitigation of the same claim in state court based on issues that were or could have been raised in the federal action, including any theories of liability based on state law.").[8] In other words, absent tolling, parties that wish to guarantee that all of their claims will get a day in court have only one option -- foregoing their right to a federal forum.

Third, even if parties could pursue their federal and state claims in separate court systems, it would be costly and inefficient for the parties to do so for no other reason than to avoid the expiration of a statute of limitations, which imposes an additional burden on the use of a federal forum. *See Musher Found., Inc. v. Alba Trading Co.*, 127 F.2d 9, 11 (2d Cir.) ("If the roast must be reserved . . . for the federal bench, it is anomalous to send the gravy across the street to the state court house."), *cert denied*, 317 U.S. 641 (1942); Herbert Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 Law & Contemp. Probs. 216, 232 (1948) ("There is vice . . . , as we have recognized by liberal rules of joinder, in forcing plaintiffs who have multiple bases of action to pursue their remedies in pieces and in different courts."); American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts*, 454 (1968) ("[I]t is clearly in the interest of sound judicial administration to adopt a procedure under which a plaintiff need not file simultaneous actions in two courts in order to ensure that his action will not be barred by the statute of limitations following a dismissal in one of them"). To avoid this

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[8] *See, e.g.*, *Equity Res. Mgt. v. Vinson*, 723 So. 2d 634, 639 (Ala. 1998); *Conn. Nat'l Bank v. Rytman*, 694 A.2d 1246, 1256-57 (Conn. 1997); *McNeal v. Paine, Webber, Jackson & Curtis, Inc.*, 293 S.E.2d 331 (Ga. 1982).

inefficiency, one could expect parties to forego the use of the federal courts to the extent practicable, thereby minimizing the transaction costs associated with their litigation. As such, the above three disincentives to the use of the original jurisdiction of federal courts all invoke "the right and duty of the national government to have its Constitution and laws interpreted and applied by its own judicial tribunals" and invite a legislative solution. *Cooper*, 73 U.S. (6 Wall.) at 253.

The fourth reason § 1367(d) is a rational means for Congress to promote the efficient administration of the federal courts in our dual system of judicial governance is that, in the absence of § 1367(d), the federal courts are likely to be burdened with a greater number of state claims between citizens of the same state, even after any federal issues have been resolved. This is because, prior to the enactment of § 1367(d), it was widely recognized that an important factor for federal courts to consider in the exercise of their discretion over whether to dismiss residual state claims was whether the plaintiff would inequitably be foreclosed from proceeding in state court by the expiration of the state statute of limitations.[9] For some courts, this factor was so important that they imposed a mandatory rule requiring retention of state claims if a plaintiff was faced with such an inequity.[10]

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[9] *See, e.g., Notrica v. Bd. of Supervisors*, 925 F.2d 1211, 1215 (9th Cir. 1991); *Newman v. Burgin*, 930 F.2d 955, 963 (1st Cir. 1991); *Prater v. United Mine Workers*, 793 F.2d 1201, 1208 (11th Cir. 1986); *Pharo v. W.L. Smith*, 625 F.2d 1226, 1227 (5th Cir. 1980).

[10] *See L.A. Draper & Son v. Wheelabrator-Frye, Inc.*, 735 F.2d 414, 428 (11th Cir. 1984); *Henson v. Columbus Bank & Trust Co.*, 651 F.2d 320, 325 (5th Cir. 1981) (per curiam); *O'Brien v. Cont'l Ill. Nat'l Bank & Trust Co.*, 593 F.2d 54, 65 (7th Cir. 1979).

If federal courts are forced unnecessarily to retain state court claims, it will impair the efficient administration of our dual system of judicial governance because, for example, "federal courts are not authorized expositors of state law [and] there is no mechanism by which their errors in such matters can be corrected on appeal by state courts." Wechsler, at 232; *see also Gibbs*, 383 U.S. at 726 ("Needless decisions of state law should be avoided . . . to promote justice between the parties, by procuring for them a surer-footed reading of applicable law."). In addition to the problems of expertise and the unavailability of appeal to a final arbiter of state law, the unnecessary retention of state claims by the federal courts also intrudes upon the interests of the States in expounding their own law. *See id.* (noting that federal courts should avoid, when possible, decisions of state law "as a matter of comity"). Thus, even if the federal courts have the constitutional right to decide state claims after dismissing federal issues on a case, Congress may prudently act to minimize the frequency with which this occurs, both to limit the needless expansion of the federal court system and to respect the sovereign interests of the component states of our union.

Fifth, § 1367(d) is a prudent rule because it replaced inconsistent and unsatisfactory *ad hoc* solutions with a consistent and simple one. For example, prior to the enactment of § 1367(d), some federal courts would refuse to dismiss a plaintiff's state claims unless the defendant would agree to waive any objections to the timeliness of the action in state court.[11] The most obvious problem with this method was that courts were unable to compel recalcitrant parties to agree to such waivers if they wished to remain in federal

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[11] *L.A. Draper*, 735 F.2d at 430; *Fin. Gen. Bankshares, Inc. v. Metzger*, 680 F.2d 768 (D.C. Cir. 1982); *Brewer v. City of El Cerrito*, 666 F. Supp. 1346, 1351 (N.D. Cal. 1987); *Saulsberry v. Atl. Richfield Co.*, 673 F. Supp. 811, 816 (N.D. Miss. 1987).

court. *See, e.g., O'Brien*, 593 F.2d at 65. In such a situation, a defendant's choice of forum would trump sound principles of judicial administration. Additionally, a court could refuse to impose this type of leverage on the defendant, adding uncertainty to the question of whether a party could safely file in federal court in the first place. *See Burns-Toole v. Byrne*, 11 F.3d 1270, 1276 (11th Cir. 1994) (holding that refusal to retain jurisdiction was not an abuse of discretion despite the expiration of the state statute of limitations). Finally, in the absence of § 1367(d), federal judges needed to devote time and resources to interpreting state limitation law, the application of which was not always clear.[12]

It is beyond cavil that § 1367(d) is a rational means to preserve the original jurisdiction of the federal courts and to efficiently administer our dual system of judicial governance. Under its narrow tolling provisions, a party's choice to bring suit in federal court does not prejudice the potential to have any state claims heard and adjudicated, while only preserving claims that have already met the state statute of limitations. Furthermore, the toll allows federal courts to efficiently manage their dockets without getting unnecessarily entangled in the interpretation of state law. Finally, it provides a consistent and predictable rule that parties can anticipate and rely upon. As such, § 1367(d) is an important tool employed by Congress to efficiently manage the jurisdiction, practice, and procedure of the federal courts. This is a goal entrusted to Congress's judgment under Article III and the Necessary and Proper Clause. *See Hanna*, 380 U.S. at 472.

In sum, because the power to enact § 1367(d) is delegated to Congress under Article III and the Necessary

[12] *See, e.g., Duckworth v. Franzen*, 780 F.2d 645, 657 (7th Cir. 1985) (noting uncertainties in state limitations law), *cert. denied*, 479 U.S. 816 (1986); *L.A. Draper & Son*, 735 F.2d at 430.

and Proper Clause, and because it does not violate any of the narrow extra-textual limits imposed on Congress's power by state sovereignty, the South Carolina Supreme Court erred by refusing to toll Mrs. Jinks's claims while her federal case was pending.

CONCLUSION

For the reasons stated above, the judgment of the Supreme Court of South Carolina should be reversed.

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